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Arizona Corporation Commission

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BEFORE THE ARIZONA CORPORATION COMMISSION

AZ CORP COMMISSION

SEP 21 1998

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JIM IRVIN
 COMMISSIONER-CHAIRMAN
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 COMMISSIONER
 CARL J. KUNASEK
 COMMISSIONER

IN THE MATTER OF THE COMPETITION IN) DOCKET NOS. RE-000000C-94-0165
 THE PROVISION OF ELECTRIC SERVICES) AND E-01345A-98-0473
 THROUGHOUT THE STATE OF ARIZONA)
)
 IN THE MATTER OF THE APPLICATION OF) COMMENTS OF THE ARIZONA TRANSMISSION
 ARIZONA PUBLIC SERVICE COMPANY FOR) DEPENDENT UTILITY GROUP ON THE APS
 APPROVAL OF ITS PLAN FOR STRANDED) STRANDED COST RECOVERY PROPOSAL
 COST RECOVERY)

In its June 22, 1998 Opinion and Order, Decision No. 60977, the Arizona Corporation Commission (Commission) ordered Affected Utilities to file their choice of options for stranded cost recovery within sixty (60) days of the date of the Order, to wit, August 21, 1998 (p.23). APS did so on that date. The Commission further ordered that, within thirty (30) days of each such filing, all other parties must file any comments/disagreements and requests for hearing (*Ibid.*) That thirtieth day (September 20th), falling on a Sunday, the deadline for comments by other parties is today, September 21, 1998. The following comments are submitted on behalf of the Arizona Transmission Dependent Utility Group¹ and its members which have participated in this rulemaking from its inception.

In its June 22, 1998 Order, the Commission did not require that separate proceedings on stranded cost recovery by a utility be undertaken with separate procedural rules including intervention. The Commission staff

¹ Aguila Irrigation District, Ak-Chin Indian Community, Buckeye Water Conservation and Drainage District, Central Arizona Water Conservation District, Electrical District No. 3, Electrical District No. 4, Electrical District No. 5, Electrical District No. 7, Electrical District No. 8, Harquahala Valley Power District, Maricopa County Municipal Water District No. 1, McMullen Valley Water Conservation and Drainage District, Roosevelt Irrigation District, City of Safford, Tonopah Irrigation District, Wellton-Mohawk Irrigation and Drainage District.

1 has provided separate docket numbers for each of the stranded cost
2 applications, apparently for their administrative convenience and to avoid
3 confusion. No procedural order has issued of which we are aware requiring
4 separate intervention in order to comply with the comment requirement in the
5 June 22 Order. However, should such request to intervene be deemed
6 necessary, we request that these comments also be deemed an Application to
7 Intervene. If the following comments seem strikingly similar to those we
8 filed last Friday on the finalization of the Emergency Rules amendments to
9 the Competition Rules, it is because the APS stranded cost filing
10 demonstrates the very omissions which we again call to the Commission's
11 attention.

12 EXIT FEE

13 In its June 22, 1998 Opinion and Order, Decision No. 60977, the
14 Commission stated (p.19):

15 "Several of the parties expressed an interest in an exit fee that would
16 enable them to make an up-front buy out of their portion of stranded costs.
17 We will order each Affected Utility to develop a discounted stranded costs
18 exit methodology that a customer may choose to determine an amount in lieu of
19 making monthly payments. The methodology should be developed with input from
20 interested parties and approved by the Commission."

21 The Emergency Rules did not carry forward the above-quoted provision in
22 the Order. Nevertheless, APS is bound to follow that provision and
23 acknowledges that the Order as well as the Emergency Rules are applicable to
24 it. However, APS' witness, Dr. John Landon, makes the only reference to this
25 subject in a single sentence buried in the back of his testimony to-wit
(Landon, p.27): "APS does not propose an exit fee for those customers that
leave the service area altogether because it is impractical." It is true
that a customer that escapes from APS' wire network cannot be forced

1 thereafter to pay a wires charge for stranded costs. That is not what the
2 Commission ordered. What the Commission ordered was calculation of a one-
3 time charge to substitute for up to six (6) years of monthly charges where a
4 customer switched suppliers, i.e., from APS to someone else. There is
5 nothing impractical about that. In fact, APS did this very thing with
6 Electrical District No. 8 and our witness in the stranded cost proceeding,
7 Kenneth R. Saline, so testified. APS and ED-8 negotiated a lost revenue
8 approach, covering a three-year period, and arrived at a dollar figure. That
9 enabled ED-8 to devise an alternative strategy for having those costs covered
10 that was obviously satisfactory to all parties involved, since there was no
11 compulsion to enter into the transaction whatsoever by APS, ED-8 or the
12 retail customers involved.

13 The Commission has ordered that APS and others present an exit fee
14 strategy and methodology. This filing cannot be approved until that happens.

15 STRANDED COSTS

16 The APS filing might better be labeled "how to get by the next six (6)
17 years without taking any risks". This could hardly be the "starvation short
18 of death" that APS implies these Rules could produce. The Stranded Cost
19 Compliance Filing of Arizona Public Service Company (APS filing), p.10. APS'
20 market generation credits (MGC) approach is the equivalent of a fat man
21 refusing his doctor's advice to go on a diet. Basically, if you care to buy
22 electricity from someone else, APS will charge you the same rate they always
23 have minus whatever they can sell electricity for at the moment. Since the
24 market clearing price for electricity at the moment is likely to be the same
25 for everyone, no one can possibly gain a market advantage on APS and thus no
competition will ensue. Only if some other electric service provider were
dumb enough to sign a long term arrangement that didn't anticipate increases
in market clearing prices would a customer have the possibility of lowering

1 electric bills. Thus, APS gets six (6) years of risk-free transactions.

2 MITIGATION

3 Not to be outdone in chutzpah, APS then proposes that it need not prove
4 that it is doing ongoing mitigation to reduce stranded costs. APS seems
5 desperate to avoid what it calls "extensive" hearings (APS Filing, p.6) or
6 "costly and time-consuming hearings" (Landon, p.28).

7 The APS theory seems to be that the relatively short timeframe for
8 collecting stranded costs (6 years) is sufficient to substitute for
9 regulatory oversight on ongoing mitigation activities because of the strong
10 company motive to mitigate what it will not be able to collect. APS Filing,
11 p.6; Landon, p.29.

12 However, APS will have no stranded costs under its MGC proposal for 6
13 years because it will be collecting the same dollars it has always collected.
14 It will just now be collecting some of them through a non-bypassable wires
15 charge. Any mitigation done during this period of time will be mitigating
16 possible future stockholder risk of stranded costs after 2004, not costs to
17 consumers during the recovery period. The plain fact of the matter is that
18 the APS filing not only ignores but defies the direct mandate the Commission
19 gave APS in its June 22 Order (p.14): "We also believe that a reading of the
20 Rules in their entirety places the burden on the Affected Utility to
21 demonstrate they have (sic) aggressively pursued mitigation efforts. As a
22 result, the Affected Utility has a high burden of proof regarding its
23 mitigation efforts. If such burden is not met, then the Affected Utilities
24 should not be allowed carte blanche recovery." One cannot sustain a high
25 burden of proof without proof. One cannot demonstrate one has proof without
process. Whether that might require "extensive" or "costly and time-
consuming" hearings is a matter for the Commission to decide, not APS.

BURDEN OF PROOF

We can't help thinking that a lot of this problem associated with the stranded cost process and mitigation would have been avoided had the Commission earlier heeded our concerns about the lack of a clear concept of burden of proof in these Rules. This omission is most strikingly apparent in the places where there are the most dollar impacts: stranded costs, mitigation efforts, and systems benefits charges. The definition of stranded costs uses the qualifier "verifiable". R14-2-1601(39). Yet the Rules are devoid of explanation of that concept. Stranded cost estimates must be "fully supported" by analyses and by records. R14-2-1607.C. Systems benefits charges must be supported by "adequate support documentation". R14-2-1608.B. Yet the Commission has stated that Affected Utilities must "demonstrate they have aggressively pursued mitigation efforts. As a result, the Affected Utility has a high burden of proof regarding its mitigation efforts." (June 22 Order, p.14) (emphasis supplied). The Commission must now answer the question whether there is a separate yardstick for mitigation that is more severe than for stranded cost estimates. It can no longer avoid the question of whether the burden of proof to demonstrate the adequacy of systems benefits charges is a lesser standard than for proving either stranded costs or mitigation efforts. It must also answer the question whether the Affected Utility should be held to the same high standard of proof throughout the process since all these charges materially affect rates that will be charged to consumers in a way that cannot be avoided. In our view, a single high burden of proof for all of these major dollar items is good public policy, easily administered. Perhaps if APS had gotten that signal already, it would have suggested a methodology for proving its ongoing mitigation efforts short of hearing processes that it seems so desperate to avoid.

1 RESPECTFULLY SUBMITTED this 21st day of September, 1998.

2 ARIZONA TRANSMISSION DEPENDENT
3 UTILITY GROUP

4 By 

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7 Original and 10 copies of the
8 foregoing filed this 21st day
of September, 1998 with:

9 Docket Control
10 Arizona Corporation Commission
1200 West Washington Street
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11 Copies of the foregoing mailed
12 this 21st day of September, 1998,
to:

13 Service List for Docket No. RE-00000C-94-0165
14 Service List for Docket No. E-01345A-98-0473

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